

1 JEFFREY A. SILVESTRI, ESQ
Nevada Bar No. 5779
2 JOSEPHINE BINETTI McPEAK, ESQ
Nevada Bar No. 7994
3 McDONALD CARANO WILSON LLP
2300 West Sahara Avenue
4 No 10, Suite 1000
Las Vegas, Nevada 89102
5 Telephone: (702) 873-4100
Fax: (702) 873-9966
6 Attorneys for Plaintiff Philip Morris USA Inc.

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 PHILIP MORRIS USA INC ,

12 Plaintiff,

13 vs

14 AMERICAN MINI MARKET INC., a Nevada
15 corporation doing business as AMERICAN
16 MINI MARKET; ARCH DRUG & SPORTING
17 GOODS, INC., a Nevada corporation doing
18 business as ARCH LIQUORS; CECILIA
19 PACHECO, individually and doing business as
20 MERCADO LOS PAISANOS; ENRIQUE
21 MATA, individually and doing business as
22 CARNICERIA EL MEXICANO; GERARDO
23 VARELA, individually and doing business as
CARNICERIA GUADALAJARA; HOA VAN
LE, individually and doing business as
SUNSHINE MARKET; IVY ALBANA,
individually and doing business as MONTEREY
MARKET; SALVADOR ALBANA,
individually and doing business as MONTEREY
MARKET; LA FERIA, L L C. , a Nevada
corporation doing business as LA FERIA;

24 LENARD LOPER, individually and doing
25 business as RAINBOW MARKET #3; M AND
H TRADING, INC , a Nevada corporation doing
26 business as M & H TRADING DISCOUNT
FOOD MART; MARIA'S MARKET, an
27 unknown business entity; MARK SCHNIPPEL,
individually and doing business as EXPRESS
28 MART 2; MARTIN AVILA, individually and
doing business as THE ONE STOP; ROSENDO

Case No.: 2:06-cv-00075-RLH-PAL

**CONSENT JUDGMENT
AND PERMANENT INJUNCTION AS TO
DEFENDANT AMERICAN MINI
MARKET INC., A NEVADA
CORPORATION DOING BUSINESS AS
AMERICAN MINI MARKET**

(DEFENDANT NO. 1)

1 NUNEZ, individually and doing business as
 2 LOS ALAMITOS; SALVADOR AYALA,
 3 individually and doing business as ROSITAS
 4 MARKET; ROSITAS MARKET
 5 INCORPORATED, a Nevada corporation doing
 6 business as ROSITAS MARKET; SARA
 7 SEGURA, individually and doing business as
 8 LA CUSCATLECA; and DOES ONE through
 9 TWENTY, inclusive,

10 Defendants.

11 Plaintiff Philip Morris USA Inc ("Philip Morris USA") and Defendant AMERICAN MINI
 12 MARKET INC, a Nevada corporation doing business as AMERICAN MINI MARKET
 13 ("Defendant"), having settled this action on the terms and conditions stated herein, it is hereby
 14 ORDERED, ADJUDGED and DECREED as follows:

15 1. This is an action for: (i) infringement of registered trademarks in violation of
 16 Section 32 of the Lanham Act, 15 U S C. § 1114; (ii) false designation of origin and trademark and
 17 trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U S C. § 1125(a); and
 18 (iii) unfair competition in violation of the common law of the State of Nevada. This Court has
 19 personal jurisdiction over Philip Morris USA and Defendant, and subject matter jurisdiction of the
 20 matter in controversy between Philip Morris USA and Defendant. Venue in this judicial district is
 21 proper.

22 2. Defendant waives any objections it may have regarding sufficiency of process or the
 23 sufficiency of service of process in this action.

24 3. Philip Morris USA manufactures cigarettes, including the famous MARLBORO®
 25 brand, for sale in the United States. Philip Morris USA is the registered owner of the following
 26 MARLBORO® and MARLBORO®-related trademarks on the Principal Register of the United
 27 States Patent and Trademark Office, all of which are valid, subsisting and incontestable pursuant to
 28 15 U S C. § 1065 (collectively "Philip Morris USA Marks"):

Registration Number	Date Registered
68,502	April 14, 1908
938,510	July 25, 1972
1,039,412	May 11, 1976
1,039,413	May 11, 1976

4 Philip Morris USA has spent substantial time, effort, and money advertising and promoting the Philip Morris USA Marks throughout the United States, and these marks have consequently developed significant goodwill, have become distinctive, and have acquired secondary meaning. As a result of the sale of counterfeit MARLBORO® and/or MARLBORO LIGHTS® cigarettes, Philip Morris USA is suffering a loss of the enormous goodwill associated with the Philip Morris USA Marks, and is losing profits from lost sales of genuine products.

5 Beginning in or about June 1, 2004 and subsequent to Philip Morris USA's adoption and first use of the Philip Morris USA Marks, Defendant allegedly offered for sale and sold to the general public counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes.

6 In a Complaint ("Complaint") filed with this Court on January 19, 2006, Philip Morris USA alleged that Defendant's offering for sale and sale of counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes constitutes trademark and trade dress infringement, false designation of origin, unfair competition, and related violations of Philip Morris USA's rights in the Philip Morris USA Marks under the Lanham Act and state law. Philip Morris USA sought both injunctive relief and monetary damages.

7 Since the filing of the Complaint, Philip Morris USA and Defendant have agreed to a full and final settlement of this action as contained herein and have agreed to the entry of this Consent Judgment and Permanent Injunction. Accordingly, it is hereby **ORDERED** that Defendant, and its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with it, are hereby permanently enjoined from:

- (i) purchasing, selling, offering for sale, or otherwise using in commerce any counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes;

(ii) assisting, aiding or abetting any other person or entity in purchasing, selling, offering for sale, or otherwise using in commerce any counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes; and

(iii) interfering with or impeding the inspections authorized by Paragraph 8(a) hereof in any way.

8 Defendant further agrees to cooperate in good faith with Philip Morris USA in any further investigation of this matter, including but not limited to (a) permitting representatives of Philip Morris USA to conduct inspections, without notice, of Defendant's inventory of cigarettes to determine whether any cigarettes bearing the MARLBORO® and/or MARLBORO LIGHTS® mark are counterfeit (such inspections may proceed at any of Defendant's retail outlets between the hours of 9:00 a.m. and 5:00 p.m. on any day Defendant is open for business) and to take possession of any such MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes Philip Morris USA or its representatives determine to be counterfeit; (b) responding to reasonable requests for information about Defendant's suppliers of MARLBORO® and/or MARLBORO LIGHTS® cigarettes; and (c) cooperating with Philip Morris USA's representatives in their investigations of any suppliers of MARLBORO® and/or MARLBORO LIGHTS® cigarettes.

9 The terms of this Consent Judgment and Permanent Injunction shall be enforceable against Defendant and any persons working in concert with it and any retail outlet Defendant and/or such persons may own or operate now or in the future

10 Defendant agrees to waive all claims in this action against Philip Morris USA with prejudice, whether they are asserted or not. All claims asserted in this action by Philip Morris USA for monetary recovery from Defendant are hereby dismissed with prejudice. There being no just reason for delay, the entry of this consent judgment by the United States District Court constitutes entry of final judgment as to all remaining claims asserted in this action by Philip Morris USA against Defendant pursuant to Federal Rule of Civil Procedure 54(b). Philip Morris USA and Defendant each will bear its own costs and attorneys' fees. Upon entry of this Consent Judgment and Permanent Injunction, any bond or undertaking Philip Morris USA has filed in this action as to

1 Defendant shall be deemed exonerated and the original of such bond or undertaking shall be
2 returned to Philip Morris USA.

3 11. The Court shall retain jurisdiction to enforce this Consent Judgment and Permanent
4 Injunction. If Defendant shall be alleged to have breached the terms of this Consent Judgment and
5 Permanent Injunction, Philip Morris USA shall have the right to reopen this matter upon motion
6 filed and heard on an expedited basis, including by ex parte application. If this matter is so
7 reopened, Philip Morris USA may pursue any and all remedies it may have against Defendant in
8 addition to liquidated damages as set forth below.

9 12. Philip Morris USA has entered this Consent Judgment in material reliance on
10 Defendant's representations as to the sources from which it has purchased the cigarettes sold at its
11 retail outlet since June 2, 2004. If Philip Morris USA determines in good faith that Defendant has
12 materially misrepresented the sources from which it purchased cigarettes during this time period, or
13 if Defendant has failed to identify any of its cigarette suppliers for this time period, such
14 misrepresentation and/or omission shall constitute a material breach of this Consent Judgment and
15 Permanent Injunction and the terms hereof shall be null and void except that Defendant shall
16 remain permanently enjoined by the provisions of Paragraphs 7 and 8 hereof, and shall be liable for
17 liquidated damages pursuant to the terms of Paragraph 13(iii). In that event, Philip Morris USA
18 shall have the right to reopen this matter upon motion filed and heard on an expedited basis,
19 including by ex parte application. If this matter is so reopened, Philip Morris USA may pursue any
20 and all non-monetary remedies it may have against Defendant, in addition to liquidated damages as
21 set forth below and shall also be entitled to recover its attorneys' fees and costs for any further
22 prosecution of this action.

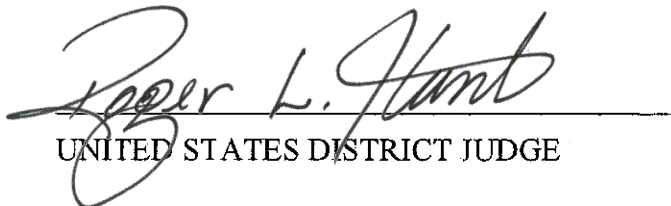
23 13. The parties recognize and acknowledge that it would be impractical or very difficult
24 to determine or fix the amount of damages that would be sustained as a result of a breach of this
25 Consent Judgment and Permanent Injunction by Defendants. Accordingly, after making a
26 reasonable endeavor to arrive at the amount that would be an approximation of the damages that
27 would or might be sustained in the event of a breach, the parties hereto agree to fix said amount of
28 liquidated damages in the sum of (i) \$500.00 per day for breach of Defendant's obligation to

1 cooperate in good faith with Philip Morris USA's investigative efforts, as set forth in Paragraph 8,
 2 and accruing after Philip Morris provides reasonable notice to Defendant of the breach; and (ii)
 3 \$500 00 for the first occasion on which Philip Morris USA confirms that Defendant has sold
 4 counterfeit MARLBORO® or MARLBORO LIGHTS® brand cigarettes after this Consent
 5 Judgment and Permanent Injunction is entered, with the monetary damages to double for each
 6 subsequent occasion on which a sale of counterfeit product is confirmed (*e g* , \$1,000 00 for the
 7 second occasion, \$2,000 00 for the third occasion, *etc*), except that if Philip Morris USA discovers
 8 10 cartons or more of counterfeit MARLBORO® or MARLBORO LIGHTS® cigarettes in the
 9 combined inventory of one or more of Defendant's retail outlets in any inspection conducted within
 10 90 days of the date on which cigarettes purchased at any of Defendant's retail outlets are confirmed
 11 as counterfeit, the amount of liquidated damages shall be multiplied by 10 (*e g* , on the first such
 12 occasion, \$5,000; on the second such occasion, \$10,000, *etc*) with any liquidated damages recovery
 13 capped at \$100,000; and (iii) in the event Defendant has materially misrepresented the sources from
 14 which it has purchased cigarettes since June 2, 2004 and/or failed to identify any of its cigarette
 15 suppliers during this time period in violation of Paragraph 12 hereof, \$500 00 per day from the date
 16 this Consent Judgment and Permanent Injunction is entered, to the date Philip Morris USA learns of
 17 the misrepresentation and/or omission

18 14. Accordingly, in the event that Defendant breaches this Consent Judgment and
 19 Permanent Injunction as set forth above, which breach shall be determined on the basis of such
 20 proof as Philip Morris USA shall present to the Court, then Defendant shall be obligated to pay to
 21 Philip Morris USA liquidated damages in the amounts set forth above. Upon the entry of an Order
 22 of this Court that Defendant has committed such a breach, Philip Morris USA shall be entitled to
 23 enforce the Court's Order, including by Writ of Execution

24 15. The parties acknowledge and represent that they have fully considered the effect of
 25 this provision for liquidated damages

26
 27 DATED: August 25, 2006


 UNITED STATES DISTRICT JUDGE

1 The individuals executing this Judgment represent or confirm that they are duly authorized
2 to do so, and are similarly authorized to bind each of the signatories to this Judgment.

3 CONSENTED TO:

4
5 DATED: August 24th, 2006

6 McDONALD CARANO WILSON LLP

7
8 By: 

9 JEFFREY A. SILVESTRI, ESQ. (#5779)

10 JOSEPHINE BINETTI McPEAK, ESQ. (#7994)

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102

11 Attorneys for Plaintiff Philip Morris USA Inc

12
13 Approved as to form and content:

AMERICAN MINI MARKET, INC.

14 DATED: August 14, 2006

15 JASON A. AWAD & ASSOCIATES

16
17 By: 

18 JASON A. AWAD, ESQ.

4386 S Eastern Avenue

Las Vegas, Nevada 89119

19 Attorneys for Defendant AMERICAN MINI MARKET

20 INC., a Nevada corporation doing business as

AMERICAN MINI MARKET

By: 

Printed Name: Souhail Faranesh

Its: President

21
22
23 LVDOCS-#118539-v1
24
25
26
27
28